

ORDINANCE NO. 2580E

AN ORDINANCE AUTHORIZING THE CITY OF GRAND JUNCTION, COLORADO TO PLEDGE CERTAIN SALES TAX REVENUES TO GUARANTEE CERTAIN OUTSTANDING BONDS OF THE RIDGES METROPOLITAN DISTRICT, MESA COUNTY COLORADO, AS PART OF A COMPREHENSIVE ANNEXATION PLAN; APPROVING THE FORM OF THE GUARANTEE; PROVIDING FOR THE PAYMENT OF ANY CLAIMS ON THE GUARANTEE FROM A PORTION OF THE REVENUES OF THE SALES AND USE TAX IMPOSED BY THE CITY; PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, by Ordinance No. 2251, passed and adopted on December 18, 1985 (the "Fund Ordinance"), the City of Grand Junction, Colorado (the "City"), has created the "City of Grand Junction, Colorado Sales and Use Tax Capital Improvement Fund (the "Fund"), and has pledged to the Fund certain proceeds of the City's 2% sales and use tax; and

WHEREAS, pursuant to the Fund Ordinance, the City Charter, and Article XX, Section 6 of the Colorado Constitution, the City is authorized, by ordinance and without an election, to issue bonds or other obligations for the purpose of constructing, acquiring, and installing capital improvements, payable solely from the sales and use tax revenues credited to the Fund; and

WHEREAS, the City Council (the "Council") has determined that the City should enter into an agreement with The Ridges Metropolitan District, Mesa County, Colorado (the "District"), whereby the District will be annexed into the City, and the District will be dissolved (except that the District will still levy taxes to pay its outstanding bonds, as described below); and

WHEREAS, the District intends to issue General Obligation Refunding and Improvement Bonds, Series 1992 (collectively, the "District Bonds") in the approximate principal amount of \$2,535,000; and

WHEREAS, the District Bonds will be secured primarily by the full faith and credit of the District; and

WHEREAS, as a part of the annexation negotiations it has been agreed that the property in the District will be annexed into the City and the District will be dissolved, except that it will continue in existence to the extent necessary to levy property taxes to pay the District Bonds and that, if the District is annexed into the City and dissolved (except to the extent necessary to adequately provide for the payment of the District Bonds), the City will guarantee the District Bonds, by the issuance of a City sales and use tax guarantee (the "Guarantee"), which guarantee will constitute a "Bond" as defined and described in the Fund Ordinance; and

WHEREAS, the Guarantee shall have an irrevocable and first lien, but not necessarily an exclusive first lien, on the sales and use

tax revenues pledged to the Fund; and

WHEREAS, the City has determined and hereby determines that the City will be issuing an obligation to acquire capital improvements by the issuance of the Guarantee because the City's issuance of the Guarantee is a condition to the annexation of the District and upon the annexation of the District the improvements which were financed or refinanced by the District Bonds will become City property; and

WHEREAS, the City has determined and hereby determines that the issuance of the Guarantee furthers a valid public purpose because the Guarantee makes possible the annexation of the District into the City which will expand the property tax and sales and use tax base of the City; and

WHEREAS, the form of the Guarantee has been presented to this meeting of Council.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Section 1. Definitions. All terms which are not defined herein shall have the same meanings as in the Fund Ordinance which is attached hereto as Exhibit A and by this reference incorporated herein.

Section 2. Authorization. In accordance with the Fund Ordinance, the Charter, the provisions of this Ordinance and the Constitution of the State of Colorado, the City hereby authorizes the issuance of its sales and use tax revenue guarantee, in an amount not to exceed the amount of District Bonds outstanding at any time and interest upon such District Bonds at the rates specified therein. The Guarantee is hereby determined to be issued to acquire capital improvements within the meaning of the Fund Ordinance.

Section 3. Special Obligation. The Guarantee shall be payable only out of the Bond Account of the Fund, into which the City covenants to deposit Pledged Revenue in an amount sufficient to pay the amount, if any, which the City is called upon to pay pursuant to the Guarantee. The beneficiary of the Guarantee may not look to any general or other fund of the City for payment of the Guarantee, and the Guarantee shall not constitute a debt or an indebtedness of the City within the meaning of the Charter, Code, constitution, or any statutory provision or limitation; nor shall it be considered or held to be a general obligation of the City.

Section 4. Guarantee Details. Upon the effective date of this Ordinance, the Guarantee shall be issued to The Bank of Cherry Creek, N.A., in Denver, Colorado, or its successors (the "Registrar"), as registrar for the District Bonds. The Guarantor shall be for the benefit of the registered owners of the District Bonds. The Guarantee shall be dated the date of its execution by the City.

Section 5. Payments on Guarantee. The Guarantee is payable in lawful money of the United States of America to the Registrar upon a valid demand, as described in the Guarantee.

Section 6. Form and Execution of Guarantee. The Guarantee shall be signed with the manual or facsimile signature of the Mayor and President of the City Council, sealed with a facsimile or manual impression of the seal of the City and countersigned and attested by the facsimile or manual signature of the City Clerk. Should any officer whose facsimile or manual signature appears on the Guarantee cease to be such officer before delivery of the Guarantee to the Registrar, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

The Guarantee shall be substantially in the form of the Guarantee presented to Council at this meeting, with such insertions and completions as are necessary or desirable to effect the transaction authorized by this Ordinance.

Section 7. Delivery of Guarantee. Concurrently with the issuance of the District Bonds, the City shall execute the Guarantee and deliver it to the Registrar.

Section 8. Funds and Accounts. Pursuant to the Fund Ordinance and the provisions hereof, the Fund has been established and the following accounts within the Fund have been established as book accounts and maintained: the Bond Account, the Reserve Account, the Subordinate Bond Account, the Subordinate Reserve Account and the Project Account.

Section 9. Pledge of Revenue and Lien. The Pledged Revenue is hereby pledged to the payment of the Guarantee. The Guarantee shall constitute an irrevocable and first lien upon the Pledged Revenue, but not necessarily an exclusively first lien. For purposes of the Fund Ordinance, the Guarantee shall constitute a "Bond". The lien of the Guarantee upon the Pledged Revenue shall be on a parity to that of any Bonds now outstanding or hereafter issued in accordance with the Fund Ordinance (such Bonds being, pursuant to the Fund Ordinance, obligations issued to construct, acquire, or install capital improvements or to pay the principal of, premium if any, and interest on such obligations, payable in whole or in part from, and secured by an irrevocable and first lien upon, the Pledged Revenue).

Section 10. Capital Improvement Fund. Pursuant to the Fund Ordinance, the City has established the Fund and has pledged to deposit the Pledged Revenue thereto in a certain order of priority. The Guarantee, constituting a Bond, shall be paid from the Bond Account, to the extent the Guarantee is drawn upon in accordance with its terms and to the extent Pledged Revenue is available to be deposited in such account in accordance with the Fund Ordinance.

Section 11. Reserve Account. Unless and until there has been a demand on the Guarantee in accordance with its terms, the City shall not take into account the Guarantee in determining the amount required to be on deposit in the Reserve Account. If the Registrar makes a demand on the Guarantee, the City shall be required to take into account the Guarantee in funding the Reserve Account. For purposes of determining the amount to be considered "debt service" on the Guarantee for the purpose of funding the Reserve Account, the City shall consider the maximum amount paid by the City in any fiscal year as the maximum annual debt service on the Guarantee. This amount shall be used in determining the Combined Maximum Annual Principal and Interest Requirements on the Bonds.

Section 12. Additional Bonds.

(a) The City may not issue additional bonds, notes, certificates, contracts, or any other obligations payable from the Pledged Revenue and having a lien thereon which is superior to the lien of the Guarantee.

(b) Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of Bonds with a lien on the Pledged Revenues which is on a parity with the lien of the Guarantee, provided (i) the City is current in the payment of principal and interest on all outstanding Bonds, and in the accumulation of any required amounts in the Reserve Account, and (ii) the Pledged Revenues collected or received by the City in the last preceding fiscal year are sufficient to cover 2.00 times the Combined Maximum Annual Principal and Interest Requirements with respect to the Guarantee, and any outstanding or proposed Bonds. For purposes of this subsection, the City shall consider the principal and interest due on the District Bonds to be the "debt service" on the Guarantee. In the event that the City sales and use tax has been increased during the preceding or current fiscal year and if such increase is pledged to pay the Bonds or in the event that the percentage of the City sales and use tax which is pledged to the payment of the Bonds has been increased, then the Pledged Revenues for the last preceding fiscal year may be adjusted by applying the new percentage to the amount of sales and use taxes actually collected during such prior fiscal year, for the purpose of determining compliance with clause (ii) of this subsection.

(c) The City may issue Subordinate Lien Bonds if (i) the City is current in the payment of principal and interest on any outstanding Bonds and any outstanding Subordinate Lien Bonds, and in the accumulation of any required amounts in the Reserve Accounts for any outstanding Bonds or the Subordinate Reserve Account for any outstanding Subordinate Lien Bonds, and (ii) the Pledged Revenues collected or received by the City in the last preceding fiscal year, excluding Pledged Revenues sufficient to meet the requirements of subsection (b) of this Section, are sufficient to cover 1.00 times the Combined Maximum Annual

Principal and Interest Requirements on the outstanding or proposed Subordinate Lien Bonds.

Section 13. Amendment. Any limitation in this Ordinance may be waived or modified by the City; provided, however, that if such waiver or modification materially adversely affects the rights of the registered owners of the District Bonds, the consent of the registered owners of the District Bonds shall be required before such waiver or modification shall take effect; provided that if a municipal bond insurance policy insures the payment of the District Bonds, the company which issues such policy shall be deemed to be the registered owner of all of the District Bonds for the purposes of this section.

Section 14. Authorization to Execute Collateral Documents. The officers of the City and the members of the Council are hereby authorized and directed to take any and all other actions necessary or appropriate to effectuate the provisions of this Ordinance.

Section 15. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the Council, not inconsistent with the provisions of this Ordinance, relating to the authorization, issuance, and delivery of the Guarantee, are hereby ratified, approved, and confirmed.

Section 16. Ordinances Irrepealable. After the Guarantee has been issued, this Ordinance and the Fund Ordinance shall constitute an irrevocable contract between the City and registered owners of the District Bonds, and shall be and remain irrepealable until the Guarantee or the District Bonds shall have been fully paid, discharged or defeased, as provided in the District Bonds and the Guarantee.

Section 17. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 18. Repealer. All orders, resolutions, bylaws, ordinances, and regulations of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 19. Declaration of Emergency and Effective Date. In order to complete the issuance and sale of the District Bonds while favorable market conditions exist, it is hereby declared that an emergency exists and that this ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the City. This Ordinance shall be effective upon final adoption.

INTRODUCED, READ, PASSED as an Emergency Ordinance with seven (7) Councilmembers voting in the affirmative, and ordered published at a regular meeting of the City Council of the City of Grand Junction, Colorado, this 1st day of July, 1992.

NAME

Mayor

(SEAL)

ATTEST:

Theresa F. Martinez

Acting City Clerk

Publication Date:

July 3, 1992

I HEREBY CERTIFY that the foregoing emergency ordinance entitled: "AN ORDINANCE AUTHORIZING THE CITY OF GRAND JUNCTION, COLORADO, TO PLEDGE CERTAIN SALES TAX REVENUES TO GUARANTEE CERTAIN OUTSTANDING BONDS OF THE RIDGES METROPOLITAN DISTRICT, MESA COUNTY, COLORADO, AS PART OF A COMPREHENSIVE ANNEXATION PLAN; PROVIDING FOR THE PAYMENT OF ANY CLAIMS ON THE GUARANTEE FROM A PORTION OF THE REVENUES OF THE SALES AND USE TAX IMPOSED BY THE CITY; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY" was introduced, read, passed and adopted as an emergency, numbered E2580, and ordered published by the unanimous vote of the members of the City Council of the City of Grand Junction, Colorado, at a regular meeting of said Council held on the 1st day of July, 1992.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City this 2nd day of July, 1992.

Theresa F. Martinez

Theresa F. Martinez, CMC
Acting City Clerk

Published: July 3, 1992